

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MONROE RANDLE

APPELLANT

VS.

NO. 2014-CP-00153-COA

STATE OF MISSISSIPPI

APPELLEE

MOTION FOR REHEARING

COMES NOW the Appellee, the State of Mississippi, by and through its counsel, and respectfully moves this Court, pursuant to Mississippi Rule of Appellate Procedure 40, for a rehearing of the above styled and numbered case and would show the following in support thereof:

I.

Monroe Randle was convicted of murder in the Clay County Circuit Court in 1980, and he was sentenced to serve a life sentence in the custody of the Mississippi Department of Corrections.

II.

On February 24, 2010, the Mississippi Parole Board granted Randle parole.

III.

In July 2012, Randle was arrested for simple assault by threat and possession of a firearm, which prompted the Mississippi Parole Board to hold a hearing to determine whether his parole should be revoked.

IV.

The Mississippi Parole Board revoked Randle's parole in July 2012. *See* Order Revoking

Monroe Randle's Parole: "Exhibit B" to Appellant's Reply Brief, filed on October 3, 2014.

V.

Randle filed a motion for post-conviction relief, in September 2013, and argued that the Parole Board revoked his parole without a sufficient showing that he had violated the terms of his parole. He claimed that his parole was revoked merely because he was arrested.

VI.

The circuit court dismissed Randle's PCR motion, and Randle appealed.

VII.

On appeal, this Court found that the record lacked any evidence of why Randle's parole was revoked, and remanded the cause for an evidentiary hearing.

VIII.

As it stands, the Court's opinion in this case contains an error of fact. Paragraph six of this Court's opinion states that "there is no record before [the] Court providing the information the *judge* relied upon in revoking Randle's parole." ***Randle v. State***, 2014-CP-00153-COA, ¶6 (May 12, 2015). The Court's opinion should be amended to reflect the fact that the circuit court judge did not revoke Randle's parole, the Parole Board did, based on its finding that "[Randle] failed to abide by the law." *See* Order Revoking Monroe Randle's Parole: "Exhibit B" to Appellant's Reply Brief, filed on October 3, 2014. It is not clear whether this misunderstanding of the facts effected the Court's ultimate conclusion, but if it did, rehearing is certainly warranted.

Also, the State asks this Court to reconsider its decision to remand the cause for an evidentiary hearing because the decision is contrary to the Supreme Court's holding in ***Hester v. State***, 741 So. 2d 229 (Miss. 1999). Randle is not entitled to an evidentiary hearing because he "fail[ed] to support his allegations that [his parole was wrongfully revoked] with any indications to

that effect in the record. *See Id.* at 231. In order to be granted a PCR evidentiary hearing, Randle should have presented some evidence to show that his parole was revoked without a sufficient showing that he violated the terms of his parole. It is Randle's responsibility, rather than that of the State, to establish error in the record, and he failed to do so. His claim is also belied by the record because, as previously noted, his parole was revoked because he violated the terms of his parole agreement by failing to abide by the law; therefore, his appeal was without merit, and he is not entitled to an evidentiary hearing. *See Id.* at 232.

For the foregoing reason, the State of Mississippi respectfully moves this Court to rehear this case, or, in the alternative, to correct its opinion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

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This the 14th day of May, 2015.

s/ Barbara Byrd
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